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TRANSCRIPT OF RECORD

(Pages 4123 to 4461)

Supreme Court of the United States

OCTOBER TERM, 1948

No. 228

NYE & NISSEN (A CORPORATION), AND ABRAHAM MONCHARSH, PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 17, 1948.

CERTIORARI GRANTED OCTOBER 25, 1948.

TRANSCRIPT OF RECORD
IN TWELVE VOLUMES

IN THE

Supreme Court of the United States

October Term, 1948

No. [illegible]

NYE & NISSEN, a Corporation, and ABRAHAM MONCHARSH,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

VOLUME X

Pages 4123 to 4461

UPON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

Rotary Colorprint, 870 Brannan Street, San Francisco

No. 11308

United States

Circuit Court of Appeals

For the Ninth Circuit.

NYE & NISSEN, a Corporation, and ABRAHAM MONCHARSH,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

In Ten Volumes

VOLUME X

Pages 4123 to 4461

Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division

Rotary Colorprint, 661 Howard Street, San Francisco

(Testimony of Abraham Moncharsh.)

Q. I would call that brother-in-law. The question is who employed Mr. Berman? Who hired him?

A. If my memory [3815] serves me correct, Mr. Berman asked me for a job a long time ago and I sent him up to the man who was in charge of the Coast Egg Products Company, and at that time it was either Mr. Wallach or Mr. Seidel, and one of the boys hired him.

Q. And then he was hired for Coast Egg Products at that time, is that right?

A. That is correct.

Q. Then later Coast Egg Products was consolidated with Nye & Nissen, wasn't it?

A. Well, I really don't know.

Q. At all events, Mr. Berman came into the employ directly of Nye & Nissen, didn't he?

A. I don't think so.

Q. Isn't he employed by them now?

A. That is correct.

Q. Who hired him?

A. Well, it just so happened.

Q. It just happened. Then didn't the president of the company have anything to do with hiring him?

A. The president of the company has very little to do with hiring and firing of people.

Q. I am asking about this particular incident?

A. I had not, no.

Q. You had nothing to do with the hiring of Mr. Berman, is that right? A. That is correct.

(Testimony of Abraham Moncharsh.)

Q. And how about Mr. Goddard? He is your brother-in-law, too, isn't he?

A. Yes, he is my wife's brother.

Mr. Faulkner: I call that a brother-in-law. I do not call the other a brother-in-law.

Mr. Pratt: Perhaps you are right. I do not know. [3846]

Q. Who hired Mr. Goddard?

A. It is possible that I did. I really do not remember.

Q. A long time ago, wasn't it? A. Yes.

Q. Both Mr. Berman and Mr. Goddard are your subordinates, aren't they?

A. I couldn't tell you. I couldn't answer that.

Q. You do not know? A. No.

Q. As president of the company you can overrule anything they do, either of them, can't you?

Mr. Faulkner: If your Honor please, that is not the law and that is not the fact. The law is clearly established that a corporation functions solely through its board of directors. Now, the board of directors is the one that has the legal power to do all of these things. We know that a president is a higher officer than a shipping clerk. The power of the president is limited by the bylaws, the charter, and the board of directors.

The Court: Develop the facts here and we will have no difficulty.

Mr. Faulkner: Yes, your Honor.

The Court: Proceed.

Mr. Pratt: Q. Now, when it comes to employ-

(Testimony of Abraham Moncharsh.)

ing people down in your plant, that is up to Mr. Berman and Mr. Goddard, is it?

A. It all depends.

Q. Depends on what?

A. On where they would fit in. [3847]

Q. I am talking about the people down on the floor of your warehouse—men, for instance, like Mr. Menges. Who hired him?

A. I don't remember. I did not.

Q. If you wanted to fire him you could do it, couldn't you?

A. Oh, yes, I have a right to fire anybody.

Q. You can fire anybody in the place, can't you?

A. That is right. I can fire myself, too.

Q. You are familiar, are you not, with everything that goes on in your place of business?

A. That is impossible.

Mr. Faulkner: Your Honor, no human being in the world could be familiar with——

Mr. Pratt: May I interrogate the witness?

Mr. Faulkner: I object to the form of the question because it assumes that a man has the capacity to know what is going on in three plants in Utah, a cheese factory in Aetna, a plant in Petaluma, a plant in Santa Cruz, and a place on Townsend Street, all at the same moment. I object to the form of the question because it assumes faculties that are not existent in a human being.

The Court: Read the question, Mr. Reporter.

Mr. Pratt: I will reframe it, if the Court please.

(Testimony of Abraham Moncharsh.)

Q. You are familiar with what goes on in your plant here at San Francisco, aren't you?

A. No, not always, no.

Q. Aren't you familiar with the stock of merchandise you have in your plant here in San Francisco? [3848]

A. The only thing that I can see is merchandise coming in and merchandise going out.

Q. Don't you know the merchandise that comes in and goes out on the several orders that are filled?

A. I have nothing to do with any specific orders.

Q. Aren't you acquainted with the character of merchandise, the kind of eggs that are there in your plant in San Francisco?

A. The only time that I know——

Q. Answer that, please?

A. No, not always, no.

Q. And aren't you familiar with the type and quality of all eggs sold and delivered out of your plant here in San Francisco?

A. No, not always.

Q. And aren't you familiar, haven't you been during all this period covered by the indictment, with the grades of eggs sold to the Government from your plant here? A. No.

Q. Do you not personally dictate the policies of Nye & Nissen and regulate and decide the daily conduct of its business? A. Absolutely not.

(Testimony of Abraham Moncharsh.)

Q. And didn't you determine the daily prices that are to be charged for your products?

A. The OPA does that.

Q. Previous to OPA weren't you the one who determined the prices for which eggs were to be sold here out of the San Francisco plant?

A. The San Francisco Mercantile Exchange did that.

Q. And did you not know during all this period the quality of [3849] eggs on the floor of your plant in San Francisco?

A. No. Any time that I was interested I went down and looked. If I was not interested I did not look and I did not know.

Q. Do you remember an interview that you had on the first of September, 1944, with the two FBI agents, Mr. Magee and Mr. Johnson?

A. I recollect that they were in to see me.

Q. And you had quite a long conference with them at that time, did you not? A. No.

Q. And that was here in your office on Missouri and 17th Street, wasn't it? A. That is right.

Q. At that time didn't you say to these two FBI agents that you personally were familiar with the type and quality of all eggs sold and delivered out of Nye & Nissen's plant in San Francisco?

A. I did not.

Q. And did you not say to them at that time that you knew and were familiar with the grades of all eggs sold to the Government from that plant?

A. I did not.

(Testimony of Abraham Moncharsh.)

Q. Did you not also at that time say to them that you personally dictated all the policies of Nye & Nissen and regulated and decided the daily prices of your products? A. I could not.

Q. And did you not at that same time say to these FBI agents that you knew the quality of eggs on the floor of Nye & Nissen at San Francisco at all times?

A. I could never make [3850] such a statement.

Q. You could never make such statements, and you did not make those statements at the time and place indicated, is that right?

A. No. I may say a certain lot of eggs in the morning may be graded AA and in the afternoon they may be graded A.

Q. I am asking you if you made those statements to those FBI agents at the time and place mentioned?

A. I could never make any such statement.

Q. You did not? A. No.

Q. Now, this Coast Egg Products Company that you spoke of a few minutes ago, which employed Mr. Berman in the first instance, you testified that that was a concern in which Nye & Nissen had an investment of about $15,500, is that right?

A. That is right.

Q. And that there were two men by the name of Seidel and Wallach who had $3,000 in it, and that they operated the concern, is that right?

A. They operated the firm, yes.

(Testimony of Abraham Monchar sh.)

Q. And that concern was operated right within your plant and your office, was it not?

A. Not within the office. They operated at 424 Clay Street and they occupied the top floor.

Q. Where was that with reference to your plant on Townsend Street?

A. Different buildings.

Q. Different buildings and in a different location, nowhere [3851] near?

A. Yes, Nye & Nissen occupied the ground floor of 424 Clay Street.

Q. And their place of business was upstairs, is that right? A. Top floor.

Q. The top floor, had an office there?

A. They had their own office, their own bookkeeper.

Q. Weren't their books supervised and kept by Mr. Eichler? A. No.

Q. Mr. Eichler had nothing to do with their books?

A. Had nothing to do. They had their own accountant, their own bookkeeper, their own office.

Q. And did they have their own bank account.

A. They had their own bank account.

Q. And you had nothing to do with that?

A. Never.

Q. Did you or your employees audit the accounts of the Coast Egg Products Company? A. No.

Q. Now, all of the merchandise which they sold they got from Nye & Nissen, didn't they?

A. No, I wouldn't say that.

(Testimony of Abraham Moncharsh.)

Q. Didn't you say that previously in your direct examination?

A. I said that they bought merchandise on the outside and they had the privilege of buying merchandise on the outside any time they saw fit.

Q. They had the privilege of buying it but you stated that they got their merchandise from you?

A. The bulk of the merchandise they got from us. [3852]

Q. These men, Seidel and Wallach, finally sold out to you, didn't they? A. Yes.

Q. About when was that?

Mr. Faulkner: I do not want to interrupt Mr. Pratt's examination, but you may recall that during the interrogation of Mr. Berman the matter was discussed; I have secured the data, which will be produced here, of exactly the history of that company. I do not want to interrupt your examination, but I will give you the exact data from the State Department records.

Mr. Pratt: Q. I would like to know the date as near as you can recall it, Mr. Moncharsh, when these men, Seidel and Wallach, disposed of their interest in the concern?

A. I believe Seidel sold his interest to Nye & Nissen in 1943.

Q. In 1943, and when did Mr. Wallach sell his interest?

A. There is some mixup in Mr. Wallach's stock, with which I am not familiar.

Q. And did you buy out Mr. Seidel?

(Testimony of Abraham Moncharsh.)

A. I bought nothing. It was Nye & Nissen that took over Mr. Seidel's stock, because Mr. Seidel owed Nye & Nissen some money.

Q. So Nye & Nissen paid nothing for the stock of Mr. Seidel? A. That is not correct.

Mr. Faulkner: Your Honor, I object to further cross-examination about this company. It is in 1943. It is not related to a single transaction. And I am quite willing to [3853] give the whole history of the company from beginning to end and read it into the record exactly as it occurred, but as a method of cross-examination I submit the subject is exhausted.

The Court: The objection is overruled.

Mr. Faulkner: Exception. They are not a party to any transaction in this case.

The Court: No, but both sides developed the transaction at the so-called Coast Egg Products Company.

Mr. Faulkner: I did not ask Mr. Moncharsh about the Coast Egg Products Company. Never asked him.

Mr. Pratt: Oh yes, you did. Pardon me.

The Court: Proceed.

Mr. Pratt: Q. You say that Nye & Nissen did not acquire the interest of Mr. Seidel until 1943?

A. If I remember correctly, Nye & Nissen took over Seidel's stock some time in 1943 in payment of money that Mr. Seidel owed Nye & Nisson.

Q. He owed Nye & Nissen or did he owe it to Coast Egg Products?

(Testimony of Abraham Moncharsh.)

A. Well, he owed it to the Coast Egg Products Company. You are probably correct.

Q. And so did Nye & Nissen then assume his indebtedness to Coast Egg Products?

A. I guess they did.

Q. And were all the debts of Coast Egg Products paid before the company was liquidated?

A. All outside debts were [3853-a] paid up by Nye & Nissen.

Q. All outside debts. Now, Mr. Berman, you say, was employed by Coast Egg Products originally. That was his first employment in any connection with you, is that right?

A. That is correct.

Q. And when was that?

A. I would say at least twelve years or more.

Q. Twelve years or more ago, you mean?

A. Yes.

The Court: We will take a recess. The jurors may be excused.

(Recess.) [3853-a]

The Court: Proceed.

Mr. Pratt: Q. You say that Mr. Berman worked for Coast Egg Products for about twelve years before the company was dissolved?

A. I don't think I said that. You asked me when Mr. Berman was hired. I said over twelve years ago.

Q. Over twelve years ago. So he has been connected with you, either in Coast Egg Products or

(Testimony of Abraham Moncharsh.)

Nye & Nissen for something over twelve years, is that right?

A. He was hired by the Coast Egg Products Company in 1931.

Q. 1931. That is about fifteen years ago.

A. Correct.

Q. Mr. Berman became president of Coast Egg Products, didn't he? A. Eventually, yes.

Q. You put him into that position?

A. I believe I had—the board of directors of Nye & Nissen put Mr. Berman in as president.

Q. The board of directors of Nye & Nissen?

A. Yes.

Q. Selected Mr. Berman as president of Coast Egg Products?

Mr. Faulkner: We object to that because the board of directors, if they selected him as president of the Coast Egg Products, he could never have become the president of Coast Egg Products Company. The board of directors of Coast Egg Products Company is the only board that has the power to elect a president.

The Witness: That's right.

Mr. Pratt: Q. Who was on the board of directors of the [3854] Coast Egg Products Company?

A. At that time?

Q. Yes.

A. When Mr. Berman was made president?

Q. Yes.

A. Mr. Wallach, Mr. Seidel. I believe Mr. Seidel was president. I wouldn't be sure.

(Testimony of Abraham Moucharsh.)

Q. Who was on the board when Mr. Berman was made president?

A. Of Coast Egg Products' board?

Q. Yes.

A. Mr. Wallach, Mr. Seidel, and one of the bookkeepers, I think.

Q. You weren't on the board?

A. I don't think so.

Q. What representative of Nye & Nissen was on the board of Coast Egg Products?

Mr. Faulkner: We object to that as not proper cross-examination.

The Court: Objection will be overruled.

Mr. Faulkner: Exception.

The Witness: A. I really don't remember. I would have to look it up.

Mr. Pratt: Q. Didn't you, yourself, dictate the formation of the board and of the officers of Coast Egg Products?

A. The formation of the board? Not exactly.

Q. You didn't? A. No.

Q. You had nothing to do with it?

A. I wouldn't say that, either.

Q. What did you have to do with it?

A. I might have participated. [3855]

Q. As president of Nye & Nissen, didn't you control the formation of the board and the employment of officers, the selection of officers of Coast Egg Products? A. No.

Q. Nye & Nissen had all the money in that concern at that time, didn't they?

(Testimony of Abraham Moncharsh.)

A. Yes, we had—Nye & Nissen had $15,500 invested in the Coast Egg Products.

Q. As against $3000 on the part of Seidel and Wallach; is that right?

A. Seidel and Wallach, and Seidel and Wallach ran the business.

Q. The funds, the capital funds of Coast Egg Products had been exhausted, had they not?

A. Eventually, yes.

Q. When Mr. Berman went in these particular men went out, didn't they?

A. I don't believe so.

Q. Did they still retain an active interest in the company, in the control of its affairs?

A. Yes.

Q. And then Mr. Berman's official activity, his official capacity was what?

A. A salesman, city salesman.

Q. Just a salesman?

A. City salesman, yes.

Q. Then as president didn't he exercise the functions or authority that go with the presidency of a corporation?

A. He was not president at that time.

Q. Did he when he was president?

A. When he was president, yes.

Q. These other men were out by that time, weren't they?

A. After these men retired Mr. Berman took over.

(Testimony of Abraham Moncharsh.)

Q. Then he was running the concern for Nye & Nissen? [3856]

A. For the Coast Egg Products Company.

Q. And for Nye & Nissen?

A. I don't know.

Q. You don't know. So as president of Nye & Nissen you did not know what the activities of Coast Egg Products were, is that the fact?

A. That is not the fact.

Q. What is the fact?

A. Any time I wanted to find out what Coast Egg Products was doing I went and found out.

Q. Didn't you keep familiar with the affairs of Coast Egg Products? A. Not entirely.

Q. Didn't you from day to day know what they were doing? A. Not exactly.

Q. What did you know?

A. I told you, any time I wanted to get information I went and got it.

Q. In your direct examination you spoke of an episode which related to Colonel Hand's activities as an inspector for the Army at your plant, do you recall that? A. 1942?

Q. In 1942, when in 1942 was that?

A. It was either in the middle, either in August or September.

Q. In August or September of 1942. Your business was then conducted at the Townsend Street plant? A. Yes.

Q. You stated that on that particular occasion Colonel Hand judged certain eggs simply by look-

(Testimony of Abraham Moncharsh.)

ing at them in the sunlight without putting the candling light on them, is that correct?

A. I saw that myself.

Q. Don't you know, as a matter of fact, that Colonel Hand, who [3857] was then perhaps a captain or a major—by the way, do you know what his rank was at that time? A. I don't, no.

Q. Isn't it a fact that he had candled these eggs, a quantity of eggs, and had found that while they were supposed to be Standards or Grade B Fresh Naturals, that in fact he found they were not Fresh Naturals, but were cold storage eggs, not fresh eggs, that they had been Dirty eggs and had been sandblasted and washed and that they had been oil-processed and therefore were not naturals?

A. That is untrue.

Q. And you say it is not a fact?

A. No, it is not.

Q. That he had candled those eggs?

A. Absolutely not. I watched him from the minute he came in to make the inspection and he went over and took up about four or six eggs out to the sunlight and came in and said, "I don't want these eggs."

Q. Those were all the eggs he examined?

A. That is all.

Q. On that occasion?

A. Yes; one handful of eggs.

Q. One handful of eggs. How many?

A. Maybe about, not over six eggs.

(Testimony of Abraham Moncharsh.)

Q. Not over six eggs, and he didn't candle them?

A. No. After he got through I picked up those six eggs.

Q. You say it is not true that he had candled these eggs and found that they were not only storage eggs, but were not fresh eggs, were not naturals, but they had been Dirty eggs and had been sandblasted and washed?

A. That is not the truth.

Q. Isn't it a fact that he took these eggs out into the sunlight, [3858] having first candled the whole lot of such eggs, took them into the sunlight and examined them there to determine very definitely whether they had been sandblasted or washed?

A. He never had a single egg out of that lot into a candling room or next to a light.

Q. Were they eggs that had been sandblasted or washed? A. No.

Q. Were they natural eggs?

A. Were they natural eggs?

Q. Yes. A. I don't know.

Q. Had they been processed?

A. I can't tell the difference between natural eggs and processed.

Q. You can't tell the difference? A. No.

Q. Can you tell when eggs have been sandblasted and washed? A. No.

Q. In examining these eggs did you make an

(Testimony of Abraham Moncharsh.)

effort to determine whether they had been sandblasted and washed?

A. I looked at the eggs, yes, and there was nothing wrong with the eggs. The eggs were of a better quality, better grade than he was entitled to.

Q. Didn't Colonel Hand, or Captain Hand, whatever his rank was, didn't he tell you at that time that these eggs would not meet the requirement of the contract, that they were not natural eggs, they were not fresh eggs, but that they were storage eggs, processed, and that they had been sandblasted or washed?

A. That is not the truth. He never gave any explanation. That is all he said, "I don't want these eggs." [3859]

Q. Then he didn't say to you that they would not meet the contract because they had been sandblasted and washed and were storage eggs that had been processed?

A. Only on one egg he found a piece of dirt not bigger than the end of a pencil.

Q. Answer my question. Did he make the statement to you that I have just repeated?

A. Absolutely not.

Q. He did not? A. No.

Q. You told him to get out and stay out, didn't you?

A. Not exactly. That would be kind of rough.

Q. Didn't you tell him that, in effect?

A. Well, do you want me to repeat what I told him?

(Testimony of Abraham Moncharsh.)

Q. All right. I would like to have you repeat it.

A. I told, whether he was a major or a captain or a colonel I don't remember, I asked him to do me a personal favor and tell his commanding officer that I don't want him to come into our plant and make any more inspections.

Q. What did he say to that?

A. I will do that for you.

Q. He said he would do it?

A. That's right.

Q. He would inform his commanding officer?

A. That's right.

Q. Who was his commanding officer?

A. Colonel Foster.

Q. Then he left the plant?

A. That's right.

Q. Did Colonel Foster later call you on the telephone? A. That is correct.

Q. Didn't Colonel Foster say to you—withdraw that. Didn't you say to Colonel Foster on that occasion over the telephone [3860] that Hand could not come into your plant to make any more Army inspections because he was arbitrary and because his inspections were unsatisfactory, or words to that effect?

A. Well, I told Colonel Foster that "We can't afford to give AA's for A's, if you want AA you buy AA."

Q. Didn't Colonel Foster say to you on that occasion that Major Hand, or whatever his rank was, was the inspector in charge of the San Fran-

(Testimony of Abraham Mencharsh.)

cisco Bay area and he was considered very fair and the best qualified and trained Army inspector in the San Francisco Bay area; didn't Colonel Foster say that to you? A. No.

Q. Didn't Colonel Foster also say to you that Hand was the officer in charge of Army inspections, and that if you wanted to fill your Army contract Hand would have to have free access to your plant at any time inspections were to be made?

A. He did not.

Q. Didn't he say that to you? A. No.

Q. And didn't he further say to you that no further deliveries on Army contracts would be accepted unless Hand or his delegated assistants were permitted free access in making inspections of eggs in your plant? A. Absolutely not.

Q. And didn't Colonel Foster also say to you on the telephone at that time that either Hand made the inspections or there will be no deliveries?

A. He did not.

Q. Now, as a matter of fact, after that time Colonel Hand, or [3861] Major Hand, or Captain Hand, whatever his rank, still continued to make Army inspections at your place, didn't he?

A. That is correct.

Q. How come?

A. Either a day after or two days after Colonel Hand, or Major Hand or Captain Hand came into our plant and he had some discussion with Mr. Smith, and Mr. Smith and Major Hand, or Captain Hand, went upstairs into the office. I was called

(Testimony of Abraham Moncharsh.)

in—that is, into the private office. I was called in for a few minutes. However, I was called out of the office to answer a call, and Major Hand went out, and that is the way the conversation ended. That is all that happened.

Q. On the occasion of this telephone conversation between you and Colonel Foster, didn't you finally agree on that occasion that if it was necessary to use Colonel Hand or his subordinates in making inspections of Army sales that you would agree—— A. I agreed to nothing.

Q. (Continuing): —That Colonel Hand should remain and come as he required to make inspections?

A. I did not agree, and he did not ask me.

Q. Now, previous to that time, Mr. Moncharsh, you had made every effort to be friendly with Major Hand, or Captain Hand; had you not?

A. Every effort. I try to be friendly with everybody.

Q. As a matter of fact, didn't you offer him very nice presents? [3862]

A. Absolutely not, never in my life.

Q. Didn't you offer him a complete set of crystal cocktail glasses? A. That is a lie.

Q. And shortly, or a while before this episode——

A. Either before or after or at any time I never offered him anything.

Q. And on an occasion shortly before the time of this episode that I described didn't you say to

(Testimony of Abraham Moncharsh.)

Hand, "Tell Ruby any time you want butter or cheese and he will have it for you"?

A. No.

Q. Don't you know, as a matter of fact, that there were offered to Hand previous to this episode weekends at Sonoma Mission Inn at the expense of your company?

A. I never did, and I believe any of our officials never did. Nobody ever did.

Q. Also weekends at Santa Cruz at the expense of your company? A. Never.

Q. Don't you know that these offers that you made, or Mr. Berman or Mr. Goddard made to Hand, were always declined and refused by Hand?

A. They were never offered.

Q. Never offered?

A. No. He didn't get a chance to decline or refuse.

Q. Coming down to the steamship William S. Clark, you have testified that the first you knew of that episode was when somebody from the American President Lines called you on the telephone, is that right? A. That is correct.

Q. Thereupon you communicated with your office in Los Angeles [28] and ordered them to go and look at these eggs and see what the matter was?

A. I communicated and gave instructions to Mr. Frank Gartenberg.

Q. Told him to go and look the matter over?

A. Yes.

(Testimony of Abraham Monchar*s*h.)

Q. That is the first you knew of the steamship William S. Clark? A. That is correct.

Q. You had never heard of it before?

A. That is correct.

Q. You knew of no order of eggs to be delivered to that steamship? A. That is correct.

Q. After Mr. Gartenberg had been on the boat with some others, you heard the testimony here about it, the report came to you that these eggs were of very low quality, didn't it?

A. No, not exactly.

Q. They simply determined that the eggs were of low quality that they examined on board the steamship there, or in the harbor at Los Angeles or Long Beach? A. Not exactly.

Q. What did you know?

A. Mr. Frank Gartenberg told me that there was something went wrong with their refrigeration and these eggs apparently didn't hold up.

Q. Where did he tell you that?

A. I believe over the telephone.

Q. Then he talked to you over the telephone after he had been out there on the ship, did he?

A. This happened—he probably called me from the pier.

Q. And told you that the eggs were unsatisfactory because [3864] of the refrigeration, that it had broken down, is that it?

A. That was his opinion and conclusion that he reached at that time.

Q. As a matter of fact, upon your inquiry you found out that these were storage eggs that had

(Testimony of Abraham Moncharsh.)

been stored for eight months or so in Los Angeles, didn't you?

A. That is not the truth.

Q. You did not know that?

A. They were not.

Q. You say they were not? A. No.

Q. As a matter of fact, the eggs, on your direction, were taken off the boat, weren't they?

A. Yes.

Q. You ordered them brought back to San Francisco, didn't you? A. Correct.

Q. But the State authorities wouldn't permit them to be, that's right, isn't it?

A. That is what I found out later.

Q. And the eggs were taken to your place in Los Angeles and recandled?

A. That is correct.

Q. And you remember that something like 40 cases were taken off the ship?

A. About that.

Q. 40 full cases and an additional partial case?

A. Something like that, yes.

Q. And they were recandled and finally there were 36 cases of eggs that were considered to be edible eggs sent back to San Francisco, is that right? A. I believe that is correct.

Q. So that after that you then gave the American President Lines as representatives of the United States Government a credit [3865] memorandum for 36 cases, is that right?

A. Well, that is an office routine matter.

(Testimony of Abraham Monchharsh.)

Q. Gave credit for 36 cases?

A. No. Let's see. I wouldn't know that unless I saw the credit. [3865-a]

Mr. Pratt: Q. I show you Exhibit No. 117 in evidence, a credit memorandum dated November 11, 1943, credit American President Lines, Steamship Clark, Long Beach, 36 cases of eggs Medium. That is the credit memorandum given in connection with those eggs, is it?

A. This is a credit memorandum given for 36 cases of eggs and 18 boxes of sweet butter.

Q. As a matter of fact, you know from the history of that transaction that four full cases, the amount of four full cases plus whatever were in this case of eggs that was only partially filled when taken from the boat—over four cases of eggs were put in the incinerator there in Los Angeles because they were unfit for human consumption, don't you?

A. According to the report, yes.

Q. Why didn't you give a credit memorandum for those rotten eggs?

A. I didn't handle that.

Q. Why wasn't such a credit memorandum given by your company?

A. I can't tell you. Maybe there was and you haven't got it. I don't know.

Q. Now, if there was a further credit memorandum for other eggs it would be a matter of record in your office here in San Francisco, wouldn't it?

A. It probably should, yes.

(Testimony of Abraham Monchharsh.)

Q. Will you produce such a credit memorandum or evidence of it this afternoon?

A. If there is any.

Q. If there is any? A. Sure. [3866]

Mr. Faulkner: What do you want, Mr. Pratt?

Mr. Pratt: Any further credit memorandum in connection with the eggs on the William S. Clark.

Q. So that if there was no other credit memorandum, by means of these documents, you required the United States Government to pay for the rotten eggs that were put in the incinerator in Los Angeles, didn't you?

A. Absolutely not. It should have their loss entirely. We should not have stood this loss either.

Q. That is because the eggs were good eggs, is that right?

A. Absolutely good eggs at the time we delivered them. You do not know anything about the egg business. I do.

Q. So that you do not know that the eggs that were put on the William S. Clark here in San Francisco and later taken off at Long Beach were from the time that they went onto the boat nothing but old storage eggs, a large percentage of which were rotten or unfit for human consumption?

A. That is not the truth.

Q. Now, then, after these eggs were returned to San Francisco you had a report from Mr. Gartenberg, your manager, didn't you?

A. I believe we had, yes.

Q. Now, this memorandum addressed to A.

(Testimony of Abraham Monchharsh.)

Monchharsh from Frank Gartenberg, Exhibit 137, dated November 3, 1943, you say you never got that? A. Can I see it?

(The document was handed to the witness.)

A. I never saw this.

Q. You never saw that—

A. Until it was shown to me here in this court.

Q. Yes, I understand your testimony. Now, as a matter of fact, didn't this memorandum go to you from Los Angeles by mail and the next day didn't you call Frank Gartenberg on the telephone and say to him in effect, "Haven't you got more sense that to put statements like that in a letter"?

A. No, sir.

Q. You made no such statement?

A. I made no such statement, no.

Q. And wasn't that conversation over the telephone from you to him about the fourth day of November, 1943, from San Francisco to Los Angeles? A. What conversation?

Q. The telephone conversation in which you told him he should not have put statements like this in writing? A. Absolutely not.

Q. There was a letter offered in evidence here, a copy of it, when your sister, Mrs. Weinstein, was on the witness-stand. Do you remember that? Do you remember that letter?

A. There were several of them.

Q. Now, you have denied that this conversation that I have spoken of came to you the next day, perhaps the 4th of November. Didn't you call Mr.

(Testimony of Abraham Moncharsh.)

Gartenberg about that time, within a few days, and say to him that this letter should not [3868] have been written, or that, in effect, because it contained the statements that it in fact bore?

A. I spoke to Mr. Gartenberg over the telephone quite frequently. However, there was no such conversation.

Q. You never made such a statement to him?

A. No.

Q. Referring to the letter which came into evidence through Mrs. Weinstein, I direct your attention to this letter which I think is the original of the same letter, and here is the envelope. Will you look them both over?

Mr. Faulkner: Which letter do you mean?

Mr. Pratt: I will show it to you.

Mr. Faulkner: The only letter that came in was an original letter.

Mr. Pratt: Q. This is an original letter with attachments which you sent to him, is it not?

A. That is correct.

Q. And in this envelope?

A. That I wouldn't know.

Q. Well, look it over. Look at the envelope.

A. I still do not know.

Q. Well, this is an envelope which is addressed to Frank Gartenberg sent by air mail registered, is it not, the envelope?

A. That is correct.

A. And it has the date on it—several dates November 13, November 14 and November 15?

(Testimony of Abraham Moncharsh.)

A. That is right.

Q. Can't you identify the envelope as having contained this [3869] letter? A. No.

Mr. Pratt: I will offer the letter with enclosures in evidence.

The Court: It may be admitted and marked.

(The letter was thereupon received in evidence and marked U. S. Exhibit 178.)

Mr. Faulkner: May we have the envelope marked for identification?

(The envelope was thereupon marked Defendants' Exhibit EE for Identification.)

Mr. Pratt: Q. You say in this letter, "I am enclosing herewith your check covering your pay for this week. Confirming our telephone conversation of today, please be advised that effective as of this date your services will no longer be required."

Now, directing your attention to that last paragraph about the telephone conversation—that is November 12—where were you when the telephone conversation took place?

A. In San Francisco.

Q. And where was Mr. Gartenberg?

A. In Los Angeles.

Q. Wasn't he at Murietta Hot Springs?

A. I don't believe so.

Q. Didn't you call him on that date at Murietta Hot Springs?

A. I spoke to Mr. Frank Gartenberg once or twice at Murietta Hot Springs, but I wouldn't remember whether it was on that occasion. [3870]

(Testimony of Abraham Moncharsh.)

Q. You would not remember whether it was at that point or not? A. No, I would not.

Q. On the occasion of this conversation that you speak of in this letter didn't Mr. Gartenberg say to you in effect that he was fed up with the crooked way you were doing business and he was resigning then and there from your employ?

A. That is not the truth and it is a big lie.

Q. You say that is not true?

A. Absolutely not, and I do not believe that he told you that either.

Q. You do not believe what?

A. That he even told you that.

Q. That he even told me that?

A. Yes. At least I am in doubt of it.

Q. As a matter of fact, hadn't Frank Gartenberg resigned previous to that time from your employment?

A. No, he has not, and he hasn't had a job since.

Q. Isn't it a fact that a month before that, namely, on October 8, 1943, he sent you a letter in which he resigned as of January 1, 1944?

A. I would have to see the letter.

Q. I show you a photostaic copy of a letter dated Los Angeles, California, October 8, 1943, addressed to you, Mr. Abe Moncharsh, Nye & Nissen, Inc., 130[illegible] - 17th Street, San Francisco, California, and ask if you did not receive the original of that letter about that time (handing a document [3871] to the witness).

Mr. Faulkner: May I see the letter, please?

The Court: The jurors may be excused. Return at two o'clock this afternoon.

(Thereupon a recess was taken until 2:00 o'clock p.m.) [3871-a]

Afternoon Session, April 2, 1946, 2:00 p.m.

The Court: Waive the roll call, stipulating and agreeing all jurors are present and in the box. proceed.

ABRAHAM MONCHARSH,

recalled:

Cross-Examination (resumed)

Mr. Pratt: If the Court please, for the record, I would like to withdraw the questions that I asked Mr. Moncharsh in regard to those certain letters dated October 8, 1943.

The Court: Let the record so show.

Mr. Pratt: Q. Mr. Moncharsh, you testified in response to a question by Mr. Faulkner,

Mr. Faulkner: What page, please?

Mr. Pratt: On page 3817. You were asked by him whether you received or there came to your attention during the period April 24th until May 13th any complaint of any kind, character or description from any steamship company in relation to delivery of merchandise between April 24th and May 13th, and you answered, "I do not ever re-

(Testimony of Abraham Mochcharsh.)

member a complaint from a steamship company with the exception of the William S. Clark," and I take it that you mean by that that the complaint came to you from the officer of the American President Lines in regard to the Clark was the only complaint that you received, or that came to your attention in regard to eggs or produce [3872] delivered for the War Shipping Administration boat; is that right?

Mr. Faulkner: That is April and May, 1944, Mr. Pratt.

Mr. Pratt: Will you kindly answer the question?

Mr. Faulkner: The question there appears——

Mr. Pratt: I read the question as it appears here.

Mr. Faulkner: Yes.

Mr. Pratt: And I read his answer, "I do not ever remember a complaint from a steamship company with the exception of the William S. Clark." I should like to have an answer to my question.

Mr. Faulkner: Read the next question, it clears itself up.

Mr. Pratt: Please. If the Court please, there is no objection yet interposed.

Mr. Faulkner: I object to it on the ground it does not accurately state the testimony of the witness.

The Court: Read the question.

(The reporter read as follows:

"You were asked by him whether you received